"बिजनेस पोस्ट के अन्तर्गत डाक शुल्क के नगद भुगतान (बिना डाक टिकट) के प्रेषण हेतु अनुमत. क्रमांक जी.2-22-छत्तीसगढ़ गजट / 38 सि. से. भिलाई, दिनांक 30-05-2001."

पंजीयन क्रमांक
"छत्तीसगढ़/दुर्ग/09/2013-2015."

# छत्तीसगढ़ राजपत्र

## (असाधारण)
## प्राधिकार से प्रकाशित

क्रमांक 547 ] रायपुर, मंगलवार, दिनांक 19 दिसम्बर 2017—— अग्रहायण 28, शक 1939

### कार्यालय मुख्य निर्वाचन पदाधिकारी, छत्तीसगढ़
शास्त्री चौक, पुराना मंत्रालय परिसर, रायपुर

रायपुर, दिनांक 1 दिसम्बर 2017

### अधिसूचना

क्रमांक -18/03/निर्वाचन याचिका/2017/2073.—— लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 (ख) के अनुसरण में भारत निर्वाचन आयोग द्वारा निर्वाचन अर्जी संख्या-11/2014 एवं 12/2014 में दिए गए उच्च न्यायालय, छत्तीसगढ़, बिलासपुर के आदेश दिनांक 13 जुलाई, 2015 को प्रकाशित करने वाली अधिसूचना एतद्द्वारा सर्वसाधारण की जानकारी हेतु प्रकाशित किया जाता है.

हस्ता./-
(सुब्रत साहू)
मुख्य निर्वाचन पदाधिकारी.

## भारत निर्वाचन आयोग

### निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001

**नई दिल्ली, तारीख 16 नवम्बर 2017 —— 25 कार्तिक, 1939 (शक)**

### अधिसूचना

संख्या **82**/ES-1/EP(11 & 12/2014)/CG-LA/2017.—— लोक प्रतिनिधित्व अधिनियम, **1951** (**1951** का **43**) की धारा **106** (ख) के अनुसरण मे, निर्वाचन आयोग एतद्द्वारा निर्वाचन अर्जी संख्या **11/2014** और **12/2014** में दिये गये उच्च न्यायालय, छत्तीसगढ़, बिलासपुर के तारीख **13** जुलाई, **2015** के आदेश को प्रकाशित करता है.

आदेश से,

हस्ता./-
**(के. एन. भार)**
प्रधान सचिव.

## ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi -110001

New Delhi, Dated 16th November 2017 ——25 Kartika 1939 (Saka)

NOTIFICATION

No. 82/ES-1/EP(11 & 12/2014)/CG-LA/2017.—— In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby published Order dated the 13th July 2015 of the High Court of Chhattisgarh, Bilaspur in Election Petition No. 11 of 2014 & 12 of 2014.

By Order,

Sd/-
**(K. N. Bhar)**
Principal Secretary.

**NAFR**

## HIGH COURT OF CHHATTISGARH, BILASPUR

**EP No. 11 of 2014**

- Deepak Dubey S/o Basant Kumar Dubey aged 35 years R/o Near Lions Club Chowk, Town- Champa, P.O. Tahsil Champa, Distt. Janjgir-Champa C.G.

**---- Petitioner**

**Versus**

- Dr. Khilawan Sahu S/o Chedi Lal Sahu aged 39 Years R/o Gram-Nagardha, Tehsil Sakti, District Janjgir-Champa C.G.

**---- Respondent**

For Petitioner : Mr. Pradeep Saxena, Adv.
For Respondent : Mr. Kishore Bhaduri with Mr. C. Jayant. K. Rao, Mr. Pawan Kesharwani, Adv. and Mr. K.P. Sahu, Adv.

**and**

**EP No. 12 Of 2014**

- Smt. Saroja Manharan Rathore W/o Manharan Rathore aged 48 years R/o Jhulkadam Sakti, Ward No. 11, P.O. Sakti, Distt. Janjgir-Champa C.G.

**---- Petitioner**

**Vs**

1. Dr. Khilawan Sahu S/o Chedi Lal Sahu Aged 39 years R/o Gram-Nagardha, Tah. Sakti, Distt. Janjgir-Champa C.G.
2. Deepak Dubey S/o Basant Kumar Dubey Aged 36 Years R/o Near Lions Club Chowk, Town Champa, P.O. Champa, Tah. Champa, Distt. Janjgir-Champa C.G.
3. Sahas Ram Karsh S/o Lakhnu Ram Karsh R/o Moholla And Post-Saragaon, Distt. Janjgir-Champa C.G.
4. Krishna Kumar Gabel S/o Late Labhoram Gabel R/o Village And P.O. Gewari, Tah. Sakti, Distt. Janjgir-Champa C.G.
5. Raja Surendra Bahadur Singh S/o Late Yuvraj Jivendra Bahadur Singh R/o Harigijar Mahal, Sakti, Distt. Janjgir-Champa C.G.
6. Lahru Yadav S/o Shiv Prasad Yadav R/o Mohalla And Post Office-Naya Baradwar, Thana- Baradwar, Tah. Sakti, Distt. Janjgir-Champa C.G.
7. Satkumar Chandra S/o Reshamlal Chandra R/o village Basin, P.O. Chandra, Tah. Sakti, Distt. Janjgir-Champa C.G.
8. Sahdeo Diwakar Alias Sahdeo Lal Satnami S/o Ramadhar Satnami R/o Dadai, P.O. Nandoorkhurd, Thana And Tah. Sakti, Distt. Janjgir-Champa C.G.

9. Chamaru Ram Yadav S/o Bhoharan Lal Yadav R/o Rani Sagar Para, Ward No. 9, In front of Safed Mahal, Tah. Sakti, Distt. Janjgir-Champa C.G.
10. Jageshwar Singh Raj S/o Runu Ram Raj R/o Dewarmal, P.O. Dewari, Tah. Sakti, Distt. Janjgir-Champa C.G.
11. Narsingh Sahu S/o Bhadrasharan Sahu R/o Mohalla And P.O. Kurud, Tah. Champa, Distt. Janjgir-Champa C.G.
12. Prakash Kumar Urnaw S/o Late Ghasiya Ram Urnaw R/o Mohalla And P.O. Ragja, Tah. Sakti, Distt. Janjgir-Champa C.G.
13. Ramprasad Sahu S/o Pardeshi Sahu R/o Manikpur, Tah. Sakti, Distt. Janjgir-Champa C.G.

**---- Respondents**

For Petitioner : Mr. Pradeep Saxena, Adv.
For Respondent No. 1: Mr. Kishore Bhaduri with Mr. C. Jayant. K. Rao, Adv.
Mr.Pawan Kesharwani, Adv. and Mr. K.P. Sahu, Adv.
For Respondent No. 8: Mr. Ravindra Sharma, Adv.

Respondents No. 2 to 7 and 9 to 13 are exparte.

**Hon'ble Shri Justice Chandra Bhushan Bajpai**

**ORDER**

**13/07/2015**

1. By this common order, interim applications I.A. No. 2/14 in EP No. 11/14 and I.A. No. 3/14 in EP No. 12/14 under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (in brevity 'CPC') filed on behalf of respondent Dr. Khilawan Sahu are being disposed of.

2. Petitioners have preferred above mentioned two election petitions under Section 80 of the Representation of People Act, 1950 (in brevity 'RP Act') challenging the election of Dr. Khilawan Sahu to CG Legislative Assembly from Sakti constituency No. 35 result of which was declared on 8th December, 2013.

3. By filing the application under Order 7 Rule 11 of the CPC, respondent Dr. Khilawan Sahu submitted that both the election petitions filed by the petitioners be dismissed under the provisions of Order 7 Rule 11 of

the CPC as they do not disclose cause of action as per requirement of Order 7 Rule 11 of the C.P.C. It is submitted that as per contention made in the election petitions, respondent Dr. Khilawan Sahu is not a qualified doctor nor he possesses any degree of any recognized institution in medicine or alternative medicine. He had shown himself as doctor in the nomination paper and other annexed documents by writing doctor. As he was not qualified doctor, it is a violation of Section 100 sub-section (1)(b) read with Section 123 sub-section (2) of the RP Act. It is further alleged that affidavit as required along with nomination paper is neither on stamp nor duly notarized nor in prescribed format, thereby there is violation of Section 100 sub-section (1)(d)(i) and (iv) of the RP Act. It is also pleaded by the petitioners that the respondent has not kept proper account and not submitted proper account before the concerned authorities which is violation of Sections 77 and 78 read with Section 100 sub-section (1)(d)(iv) of the RP Act. The respondent is having degree of MBBS AM which was approved and accepted by the authorities. There is no disclosure of cause of action as to how writing of word 'Dr.' falls under the category of corrupt practice. Even otherwise as he possesses a degree of MBBS AM by writing the word 'Dr.' he had not violated any rule so that his election may be declared void nor committed any corrupt practice.

4. Learned counsel for the respondent also submitted that the affidavit is duly stamped and notarized. Stamps are properly cancelled. The affidavit is in prescribed format, thereby his election cannot be declared void. He had duly maintained account and submitted before the authorities which was accepted by the authorities. Simply saying that no proper account was maintained does not make out a ground

for declaring election to be void. As there is no material facts and material particulars for disclosing the cause of action, hence both the petitions may be dismissed *in limine* under Order 7 Rule 11 of the CPC.

5. In both the petitions, reply to the interim applications has been filed by the petitioners pleading that plaint discloses cause of action on the basis of the question of fact and the test is as to whether if the averments made in the plaint are taken to be correct in its entirety, a decree would be passed. It is submitted that grounds on which election of the respondent is sought to be declared void are duly mentioned in the election petitions. The affidavit is not in the form No. 26, also not on the stamp paper as required by the Conduct of Election Rules, 1961. The respondent is not a licensed doctor even then he had shown his name as Dr. Khilawan Sahu. As he is not a qualified doctor holding degree course, the word 'Dr.' is not to mentioned in nomination form and the acceptance of the nomination form is improper. Also as the respondent has not maintained proper account as required, he has violated the provisions of Sections 77 and 78 of RP Act and thereby non-compliance with the provisions of this Act and the rules is committed by the respondent thereby the petitioner submitted that cause of action is mentioned in the petition. It may not be held that plaint does not disclose any cause of action. Consequently, interim applications under Order 7 Rule 11 of the CPC being devoid of merit deserve to be dismissed with exemplary cost.

6. Learned counsel for the respondent supported the applications and vehemently argued that the allegations made in the plaint do not

disclose any cause of action. Merely by writing the word 'Dr.', no any corrupt practice has been committed by the returned candidate. He duly submitted the mark sheet Annexure R-1 and registration certificate R-2, a copy of the order passed by the Hon'ble High Court of MP at Jabalpur in W.P. No. 295/94 (Council of Alternative System of Medicine and one another -v- State of M.P. and one another). The said writ petition was disposed of along with other connected writ petitions vide order dated 19-3-1999 (prior to reorganization of the State of CG as the State of Chhattisgarh was part of erstwhile State of MP) holding that practice in alternative system of medicine and imparting education in alternative system of medicine is not illegal and the said degree holders of alternative system of medicine cannot be stopped from carrying out practice in alternative system and teaching in the said system in view of Article 19 (1)(g) of the Constitution of India and prohibiting them from aforesaid act is illegal. Hon'ble High Court set aside the act prohibiting the petitioners to practice and impart eduction in the alternative system of medicine. Said order is equally applicable till today and holds a good law. Learned counsel contended that he had not made any false statement by writing word 'Dr.' and mentioning his decree as MBBS AM. There is no pleading that by false practice he affected the view of the voter which was necessary. It is contended that there is no corrupt practice played by the respondent by writing the word 'Dr.' and mentioning his degree as MBBS AM.

7. Learned counsel further submitted that the petitioner has not complied with Rule 94A of Conduct of Election Rules, 1961 (in brevity 'the Rules') and gave affidavit in Form No. 25. He also submits that there is no wrong in writing the word 'Dr'. Corrupt practice is not proved. The

petitions do not disclose any cause of action. It should be specifically mentioned. Proper accounts were maintained and accepted by the returning officer. No notice to show cause for improper account is given. It is not mentioned in the petition as to which part of account is wrong. Simply to say that account is improper is a vague statement. No specific pleading is there. The affidavit is as per prescribed format provided by the Election Commission itself along with nomination paper. It is in support of nomination. No show cause notice was issued by the returning officer for improper affidavit. Also when the account was accepted no objection was made in this behalf by the petitioner. Though it is not mandatory but the petitioner may make objection before the returning officer. For the sake of example if any irregular account is maintained even then it may not be held as unauthorized account. There is non-disclosure of the fact in the petition. There is no specific pleading regarding corrupt practice. No cause of action is shown. No effective order and decree may be passed on the pleading of the petition. It is not alleged that respondent practiced in any other pathy but for alternative medicine. The respondent submits that as the petitions do not disclose the cause of action, the same may be rejected.

8. It is also contended that the degree MBBS AM is duly accepted by the order of High Court of MP. The same is also applicable for this State unless any contrary order is passed by this Court. The petitioner has not challenged the above mentioned order passed by the High Court of M.P. Decision of the High Court of MP is binding and res judicata. There is no specific pleading regarding improper acceptance of nomination. Only on the basis of bald allegations, it cannot be held

that nomination was improperly accepted. The affidavit is in required format. Tickets are affixed. Notery has signed, duly cancelled the stamp. In every page, notary has put his signature, also notarized. The substantial facts are not pleaded. Illegality is not specifically mentioned. It is lastly submitted that in absence of any cause of action, the petition may be rejected.

9. Learned counsel for the respondent placed reliance in the case of Shambhu Prasad Sharma -v- Charandas Mahant and others reported in (2012) 11 SCC 390 in which Hon'ble Supreme Court held in para 15, 19 and 20 as under:-

> *"15. Suffice it to say that the case pleaded by the appellant was not one of complete failure of the requirement of filing an affidavit in terms of the judgment of this Court and the instructions given by the Election Commission but a case where even according to the appellant the affidavits were not in the required format. What is significant is that the election petition did not make any averment leave alone disclose material facts in that regard suggesting that there were indeed any outstanding dues payable to any financial institution or the government by the returned candidate or any other candidate whose nomination papers were accepted. The objection raised by the Appellant was thus in the nature of an objection to form rather than substance of the affidavit, especially because it was not disputed that the affidavits filed by the candidates showed the outstandings to be nil.*
>
> *19. In the case at hand, the Appellant alleges that the affidavit did not in the prescribed format state whether the candidates had any outstanding liabilities qua financial institutions or the government. Now a departure from the format may assume some importance if the Appellant alleged that there were such outstanding liabilities which were concealed by the candidates. That, however, is not the case of the Appellant. Any departure from the prescribed format for disclosure of information about the dues, if any, payable to the financial institutions or the government will not be of much significance, especially when the declaration made by the returned candidate in his affidavit clearly stated that no such dues were recoverable from the deponent. The departure from the format was not, in the circumstances, of a substantial character on which the nomination papers of the returned candidate could be lawfully rejected by the returning officer.*
>
> *20. Coming to the allegation that other candidates had also not submitted affidavits in proper format, rendering the acceptance of their nomination papers improper, we need to point out that the*

*Appellant was required to not only allege material facts relevant to such improper acceptance, but further assert that the election of the returned candidate had been materially affected by such acceptance. There is no such assertion in the election petition. Mere improper acceptance assuming that any such improper acceptance was supported by assertion of material facts by the Appellant-Petitioner, would not disclose a cause of action to call for trial of the election petition on merit unless the same is alleged to have materially affected the result of the returned candidate."*

10. Further reliance is placed in the matter of Ramsukh -v- Dinesh Aggarwal reported in (2009) 10 SCC 541 wherein Hon'ble Supreme Court held in para 12, 13, 15, 16, 17, 18, 19 and 20 as under:-

*"12. It is evident that controversy in this appeal lies in a narrow compass. It revolves around the ambit of Section 83 of the Act. The point for consideration is whether the election petition lacked "material facts" required to be stated in the election petition in terms of Section83(1) of the Act and if so, could it be dismissed summarily without trial? As already noted, it is mandatory that all "material facts" are set out in an election petition and it is also trite that if material facts are not stated in the petition, the same is liable to be dismissed on that ground alone. Therefore, the question is as to whether the election petitioner had set out "material facts" in his petition?*

*13. The phrase "material facts" has neither been defined in the Act nor in the Code and, therefore, it has been understood by the courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. In other words, "material facts" are facts upon which the plaintiff's cause of action or defendant's defence depends. (See: Mahadeorao Sukaji Shivankar v. Ramaratan Bapu (2004) 7 SCC 181). Broadly speaking, all primary or basic facts which are necessary either to prove the cause of action by the plaintiff or defence by the defendant are "material facts". Material facts are facts which, if established, would give the petitioner the relief asked for. But again, what could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down.*

*15. At this juncture, in order to appreciate the real object and purport of the phrase "material facts", particularly with reference to election law, it would be appropriate to notice distinction between the phrases "material facts" as appearing in Clause (a) and "particulars" as appearing in Clause (b) of Sub-section (1) of Section 83. As stated above, "material facts" are primary or basic facts which have to be pleaded by the petitioner to prove his cause of action and by the defendant to prove his defence. "Particulars", on the other hand, are details in support of the material facts, pleaded by the parties. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture*

*already drawn so as to make it full, more clear and more informative. Unlike "material facts" which provide the basic foundation on which the entire edifice of the election petition is built, "particulars" are to be stated to ensure that opposite party is not taken by surprise.*

*16. The distinction between "material facts" and "particulars" and their requirement in an election petition was succinctly brought out by this Court in Virender Nath Gautam v. Satpal Singh (2007) 3 SCC 617, wherein C.K. Thakker, J., stated thus: (SCC p.631, para 50)*

> *50. There is distinction between facta probanda (the facts required to be proved i.e. material facts) and facta probantia (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only facta probanda and not facta probantia. The material facts on which the party relies for his claim are called facta probanda and they must be stated in the pleadings. But the facts or facts by means of which facta probanda (material facts) are proved and which are in the nature of facta probantia (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue.*

*17. Now, before examining the rival submissions in the light of the afore- stated legal position, it would be expedient to deal with another submission of learned Counsel for the appellant that the High Court should not have exercised its power either under Order VI Rule 16 or Order VII Rule 11 of the Code to reject the election petition at the threshold. The argument is two-fold viz.*

*(i) that even if the election petition was liable to be dismissed ultimately, it should have been dismissed only after affording an opportunity to the election petitioner to adduce evidence in support of his allegation in the petition and*

*(ii) since Section 83 does not find a place in Section 86 of the Act, rejection of petition at the threshold would amount to reading into Sub-section (1) of Section86 an additional ground.*

*In our opinion, both the contentions are misconceived and untenable.*

*18. Undoubtedly, by virtue of Section 87of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order VI Rule 16 and Order VII Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the Electorate have reposed confidence in him. The submission,*

*therefore, must fail.*

*19. Coming to the second limb of the argument viz., absence of Section 83 in Section 86 of the Act, which specifically provides for dismissal of an election petition which does not comply with certain provisions of the Act, in our view, the issue is no longer res-integra. A similar plea was negatived by a three-Judge Bench of this Court in Hardwari Lal v. Kanwal Singh (1972) 1 SCC 214, wherein speaking for the Bench, A.N. Ray, J. (as His Lordship then was) said: (SCC p.221, para 23)*

> *23. Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117of the Act. It was emphasised that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. A suit which does not furnish cause of action can be dismissed.*

*20. The issue was again dealt with by this Court in Azhar Hussain v. Rajiv Gandhi 1986 (Supp) SCC 315. Referring to earlier pronouncements of this Court in Samant N. Balkrishna 1969 (3) SCC 238 and Udhav Singh v. Madhav Rao Scindia (1977) 1 SCC 511 wherein it was observed that the omission of a single material fact would lead to incomplete cause of action and that an election petition without the material facts is not an election petition at all, the Bench in IN Azhar Hussain's (supra) held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) of the Act and an election petition can be and must be dismissed if it suffers from any such vice."*

11. Reliance is also placed in the matter of Anil Vasudev Salgaonkar -v- Naresh Kushali Shigaonkar reported in (2009)9 SCC 310 wherein Hon'ble Supreme Court held in para 50 and 51 as under:-

*"50. The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.*

*51. This Court in Samant N. Balkrishna's case 1969 (3) SCC 238 has expressed itself in no uncertain terms that the omission of a*

*single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In Udhav Singh v. Madhav Rao Scindia(1977) 1 SCC 511, the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail."*

12. Further reliance is placed in the matter of Prahladan -v- Varkala Kahar reported in (2012 Lawsuit (Ker) 760 wherein High Court of Kerala has held in para 19, 20 and 21 as under:

*"19. The question whether the rejection of the nomination paper of the petitioner for the reason that Form No. 26 affidavit produced with the nomination paper sworn to before a Notary was not stamped for notarization was proper or improper has to be adjudged and examined with reference to the provisions covered by Sections 33(1) and 36(1) of the Act, Rules 4 and 4-A of the Conduct of Election Rules, Form 2B and paragraph 10.1 (viii) of the guidelines issued to the Returning Officers in the Hand Book. In the context, it is also to be pointed out that the Returning officer examined as PW2, when his attention was drawn to the guidelines given in the Hand Book, particularly, paragraph 10.1(viii) that a defect in the affidavit should not be a ground for rejection of the nomination conceding that guideline asserted that subsequently contra instructions have been given by the Election Commission. That assertion made by him that instructions conflicting with that covered by paragraph 10.1(viii) of the Hand Book is nothing but an explanation canvassed of, which has no merit, to justify the rejection of the nomination papers for not following the guidelines given in paragraph 10.1 (viii) of the Hand Book.*

20. *As already indicated Form No. 26 affidavit was sworn to before a Notary Public, but, stamp for notarization however happened to be affixed in a different affidavit produced with the nomination paper. When that be so, it was clearly a case that non-affixing the stamp for notarization in Form No. 26 affidavit was only a mistake, and such mistake was not a defect of substantial character. Rejection of the nomination papers of the petitioner on the ground that it was not duly attested by the Notary for the reason of non-affixing of stamp for notarization in Form No. 26 affidavit was*

*improper. When Form No. 26 affidavit was filed with the nomination paper duly signed by a Notary even if stamp for notarization has not been affixed in such affidavit, but only in the other affidavit produced, still, it is a case where an opportunity for affixing of the required stamp for notarization of the affidavit should have been extended to the petitioner having regard to the instructions given under the guidelines in paragraph 10.1(viii) of the Hand Book issued to the Returning Officers. The Returning officer has rejected the nomination paper of the petitioner on a ground which is not sustainable under law. Having regard to the provisions of the Act, Rules and guidelines under the Hand Book it has to be concluded that the nomination papers of the petitioner have been improperly rejected.*

*21. The learned senior counsel appearing for the respondent/ returned candidate has relied on Rattan Anmol Singh and another v. Ch. Atma Ram and others (AIR 1954 SC 510) and V.R. Kamath v. Divisional Controller, Karnataka State Road Transport Corporation and others (1997 AIR (kAR) 275) to conte hat an affidavit cannot be said to be duly attested when it has not been notarized in accordance with the provisions of law. The question whether it was properly notarized or not in relation to acceptance or rejection of a nomination paper has to be examined and appreciated with reference to the provisions of the Act, Rules and guidelines issued by the Election Commission. Rule 4-A of the Conduct of Election Rules only mandates of signing of an affidavit before a Magistrate or a Notary Public. Even if an affidavit is sworn to before the Notary Public is not affixed with the stamp for notarization, in the light of the guidelines covered by 10.1(viii) to the Returning Officers in the Hand Book issued by the Election Commission the nomination paper is not to be rejected, and if i' so rejected it is improper. Success of a returned candidate is no be interfered with unless there are strong and compelling circumstances as it would amount to setting at naught the decision of the majority of the electorate was another ground canvassed by the learned counsel relying on Ram Sukh v. Dinesh Aggarwal (2009) 10 SCC 541). In a case where election is challenged on the ground of improper rejection of nomination paper the scope of enquiry is limited. The Apex Court repelling a contention sim canvassed has stated thus in Anil Baluni v. Surendra Singh Negi AIR 2005 SC 3987):*

> *"The election petition has been filed on the ground that the appellant's nomination papers had been improperly rejected, which is a ground contemplated by Section 100(1)(c) of the Act. In such a case the only issue before the Court is to a examine the correctness and propriety of the order by which the nomination papers of a candidate are rejected and the scope of inquiry is limited to the said consideration."*

13. Reliance is further placed in the matter of L.R. Shivaramagowda, etc. -v- T.M. Chandrashekar etc. reported in 1998

STPL(LE) 25662 SC wherein Hon'ble Supreme court held in para 10, 11 and 12 as under:-

> *"10. That apart, it is rightly pointed out by the appellant's counsel that in order to declare an election to be void Under Section 100(l) (d)(iv), it is absolutely necessary for the election petitioner to plead that the result of the election insofar as it concerned there turned candidate had been materially affected by the alleged non-compliance with the provisions of the Act or of the Rules. We have already extracted paragraph 39 of the Election Petition which is the only relevant paragraph. One will search in vain for an averment in that paragraph that the appellant had spent for the election an amount exceeding the prescribed limit or that the result of the election was materially affected by the failure of the appellant to give true and correct accounts of expenditure. In the absence of either averment it was not open to the appellant to adduce evidence to that effect. It cannot be denied that the two matters referred to above are material facts which ought to find a place in an election petition if the election is sought to be set aside on the basis of such facts.*
>
> *11. This court has repeatedly stressed the importance of pleadings in an election petition and pointed out the difference between "Material facts" and "Material particulars." While the failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed to introduce such material facts after the time limit prescribed for filing the election petition, the absence of material particulars can be cured at a later stage by an appropriate amendment. In Shri Balwan Singh v. Shri Lakshmi Narain and Ors., [1960]3SCR91] the Constitution Bench held that an election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. On the facts of the case, the Court found that the alleged corrupt practice of hiring a vehicle for the conveyance of the voters to the polling station was sufficiently set out in the pleading. The Court pointed out that the corrupt practice being hiring or procuring of the vehicle for the conveyance of the electors, if full particulars of conveying by a vehicle of electors to or from any polling stations were given, Section 83 was duly complied with, even if the particulars of the contract of hiring, as distinguished from the fact of hiring were not given.*
>
> *12. In Samant N. Balakrishna and Anr v. George Fernandez and Ors., [1969]3SCC 238 the Court said that if the material facts of the corrupt practice are stated, more or better particulars of the charge may be given later, but where the material facts themselves are missing, it is impossible to think that the charge has been made and later amplified and that would tantamount to making of a fresh petition."*

14. Reliance is also placed in the matter of <u>T. N. Angami -v- Smt. Ravoleu</u> reported in AIR 1972 SC 2367 to contend that Hon'ble

Supreme Court has held in above case that mere failure on the part of candidate to keep correct account or enter necessary particulars in account, would not amount to incurring or authorizing expenditure. Section 77(3) clearly relates to expenditure at such. Mere omission to enter expenditure in contravention of Section 77 would not be a corrupt practice within the meaning of Section 123(6) of the R.P. Act.

15. Learned counsel for the respondent submits that in the the light of the law laid down in above case laws, the petitions may be dismissed.

16. Learned counsel for the petitioners in both the petitions opposed the interim applications and submitted that the respondent is making a new case for cause of action. Case of the petitioner is not for corrupt practice but for wrong acceptance of nomination. The nomination as filed is not properly submitted technically. Hence said nomination filed on behalf of the respondent be rejected. The petition is based on non-compliance of Section 100 sub-section (1)(d)(i) and (iv) of the RP Act. There is no affidavit on stamp paper as required, also the affidavit is not in form No. 26 thereby as the affidavit is not in prescribed format and on stamp paper. Nomination is not supported by any acceptable affidavit. Learned counsel further argued that if any of the allegations is prima facie proved then the Order 7 Rule 11 of the Code does not apply. There is a cause of action and violation of RP Act. There is non-compliance of Annexure P-8 and P-9. There was allegation that the respondent wrote word 'Dr.' before his name. His degree was not approved by the Medical Council of India. By a bare reading of Annexure P-10 and P-11, it is clear that alternative medicine is not

duly recognized. Alternative medicine is not a recognized course in any recognized medical college as per concerned Act. Registration certificate and mark sheet do not show anything regarding register and other attending facts, also do not show under which law they are registered as doctor. On the basis of annexures annexed in the petition, it is clearly shown that alternative medicine is not recognized by Medical Council of India. Hence affidavit is false. Nomination had to be rejected. Also the accounts were not properly maintained. All grounds are available and acceptable. Nomination was wrongly accepted. Hence the petitioner has shown cause of action. Consequently, the interim applications may be dismissed as not maintainable.

17. On behalf of the petitioners, reliance is placed in the matter of Arikala Narasa Reddy -v- Venkataram Reddy Reddygari and another reported in 2014 (5) SCC 312 wherein Hon'ble Supreme Court held in para 13 and 25 as under:-

> "13. *It is a settled legal proposition that the statutory requirements relating to election law have to be strictly adhered to for the reason that an election dispute is a statutory proceeding unknown to the common law and thus, the doctrine of equity, etc. does not apply in such dispute. All the technicalities prescribed/mandated in election law have been provided to safeguard the purity of the election process and courts have a duty to enforce the same with all rigours and not to minimize their operation. A right to be elected is neither a fundamental right nor a common law right, though it may be very fundamental to a democratic set-up of governance. Therefore, answer to every question raised in election dispute is to be solved within the four corners of the statute. The result announced by the Returning Officer leads to formation of a government which requires the stability and continuity as an essential feature in election process and therefore, the counting of ballots is not to be interfered with frequently. More so, secrecy of ballot which is sacrosanct gets exposed if recounting of votes is made easy. The court has to be more careful when the margin between the contesting candidates is very narrow. "Looking for numerical good fortune or windfall of chance discovery of illegal*

*rejection or reception of ballots must be avoided. as it may tend to a dangerous disorientation which invades the democratic order by providing scope for reopening of declared results". However, a genuine apprehension of mis-count or illegality and other compulsions of justice may require the recourse to a drastic step.*

*25. In a composite election petition wherein the petitioner claims not only that the election of the returned candidate is void but also that the petitioner or some other person be declared to have been duly elected, Section 97 of the Act comes into play and allows the returned candidate to recriminate and raise counter-pleas in support of his case. "but the pleas of the returned candidate under Section 97 have to be tried after a declaration has been made under Section 100 of the Act." The first part of the enquiry is in regard to the validity of the election of the returned candidate which is to be tried within the narrow limits prescribed by Section 100 (1) (d) (iii) while the latter part of the enquiry governed by Section 101 (a) will have to be tried on a broader basis permitting the returned candidate to lead evidence in support of the pleas taken by him in his recrimination petition. If the returned candidate does not recriminate as required by Section 97, then he cannot make any attack against the alternative claim made by the election petitioner. In such a case an enquiry would be held under Section 100 so far as the validity of the returned candidate's election is concerned, and if as a result of the said enquiry, declaration is made that the election of the returned candidate is void, then the Tribunal will proceed to deal with the alternative claim, but in doing so, the returned candidate will not be allowed to lead any evidence because he is precluded from raising any pleas against the validity of the claim of the alternative candidate. (Vide: Jabar Singh v. Genda Lal, AIR 1964 SC 1200. Ram Autar Singh Bhadauria v. Ram Gopal Singh & Ors., AIR 1975 SC 2182; and Bhag Mal v. Ch. Parbhu Ram & Ors., AIR 1985 SC 150)."*

18. Further reliance is placed in the matter of Ponnala Lakshmaiah -v- Kommuri Pratap Reddy and others reported in (2012) 7 SCC 788 wherein Hon'ble Supreme Court in para 4, 5, 7 and 8 held as under:-

*"4. This Court has in Om Prakash Srivastava v. Union of India and Anr. (2006) 6 SCC 207 attempted an explanation of the expression in the following words:*

*The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above the expression means every fact, which it would be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment of*

*the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary, to prove each fact. comprises in "cause of action.*

*5. It is equally well settled that while examining whether a plaint or an election petition discloses a cause of action, the Court has a full and comprehensive view of the pleading. Averments made in the plaint or petition cannot be read out of context or in isolation. They must be taken in totality for a true and proper understanding of the case set up by the Plaintiff.*

7. Reference may also be made to the decision of this Court in *Church of North India v. Lavajibhai Ratanjibhai and Ors.* (2005) 10 SCC 760, wherein this Court reiterated that for purposes of determining whether the plaint discloses a cause of action, the Court must take into consideration the plaint as a whole. It is only if even after the plaint is read as a whole, that no cause of action is found discernible that the Court can exercise its power under Order VII Rule 11 of the Code of Civil Procedure.

8. To the same effect is the decision of this Court in *Liverpool and London S.P. and I. Asson. Ltd. v. M.V. Sea Success I. and Anr.* (2004) 9 SCC 512; where this Court held that the disclosure of a cause of action in the plaint is a question of fact and the answer to that question must be found only from the reading of the plaint itself. The Court trying a suit or an election petition, as the position is in the present case, shall while examining whether the plaint or the petition discloses a cause of action, to assume that the averments made in the plaint or the petition are factually correct. It is only if despite the averments being taken as factually correct, the Court finds no cause of action emerging from the averments that it may be justified in rejecting the plaint. The following paragraph from the decision is apposite in this regard:

> *Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in its entirety, a decree would be passed."*

19. Learned counsel for the petitioner in both the petitions submitted that both the cited case law are applicable in the instant petitions. Looking to the entire facts and circumstances, interim applications may be dismissed.

20. On behalf of respondent, written submission is also submitted wherein they duly supported the interim applications under Order 7 Rule 11 of the CPC and their oral submissions. No new ground is taken in the written submission.

21. For appreciation of interim applications under Order 7 Rule 11,

CPC following questions emerge for consideration :-

i. Whether the word "Dr." written before the name of respondent is a ground for declaring the election to be void as required under Section 100 sub-section (1)(b) read with Section 123 sub-section (2) of the RP Act ?

ii. Whether the affidavit was on prescribed format and also duly stamped as required under Section 100 sub-section (1)(d)(i) and (iv) of the RP Act ?

iii. Whether account was not properly maintained and submitted before the authorities as required under Sections 77 and 78 read with Section 100 sub-section (1)(d)(iv) ?

22. So far as first point is concerned, respondent duly annexed the mark sheet as Annexure R-1 and registration certificate Annexure R-2. The judgment of High Court of MP which is applicable in the instant case, also goes to show that MBBS AM is nothing to do with any discipline under the Medical Council of India or any other Act. The High Court of MP vide its judgment stated that petitioners in those cases are permitted to practice in the alternative system of medicine and to impart eduction thereof. It also set aside the act of the respondent prohibiting the petitioners for practicing in alternative system of medicine. With the above facts and decision which are relevant for the present case also, it may not be held that writing the word 'Dr.' before his name and writing the decree as MBBS AM is illegal, is a false statement and beyond authority. In the considered view of this Court, the petitioner fails to demonstrate any cause of action on account of writing word 'Dr.' and mentioning the name of the degree in the nomination paper or in affidavit. It also cannot be held that there was any improper acceptance of any nomination paper writing name as Dr. Khilawan Sahu. The petitioner failed to demonstrate any case of action for this fact.

23. So far as second point that the affidavit was not in prescribed format and duly stamped as required under Section 100 sub-section (1)(d)(i) and (iv) of the R.P. Act is concerned, a perusal of entire material regarding this fact goes to show that affidavit was in prescribed format provided by the Election Commission itself and

affidavit was duly stamped, notarized, also the stamps were cancelled. In every page, there was signature of the notary. In totality it may not be held that affidavit is not duly stamped and in prescribed format. In the considered view of this Court, the petitioner is not able to demonstrate this point as cause of action. The authorities concerned rightly accepted the nomination form.

24. As regards point No. 3 regarding maintenance of proper account and its submission before the authorities as required under Sections 77 and 78 read with Section 100 sub-section (1)(d)(iv) of the RP Act, a perusal of the pleading goes to show that there is no specific pleading regarding improper account. Accounts were duly maintained and submitted before the authorities. Concerned authorities accepted the account as expected under Sections 78 of the RP Act. Merely on levelling an ambiguous pleading that the account was not properly maintained, it cannot be held in absence of any specific pleading that accounts were not properly maintained and submitted. No violation of prescribed format or its presentation is demonstrated by the petitioner. In absence of any specific pleading, this point is also not duly demonstrated and prima facie proved by the petitioner in both the petitions. On due consideration, this court is of the view that in both the election petitions, the petitioners have failed to prove any cause of action as expected under Section 100 sub-section (1)(b) read with Section 123 sub Section (2) under Section 100 sub-section (1)(d)(i) and (iv) and also Sections 77 and 78 read with section 100 sub-section (1)(d)(iv) of the RP Act. The petitions as filed do not disclose cause of action. Whatever pleading in both the petitions are countered by the respondent and it is sufficiently proved that both the elections petitions do not disclose a cause of action.

25. On perusal of the case the case laws cited by the respondents, this court is agreed that they are applicable in the present case. The case laws cited by the petitioners are of no help to them.

26. Consequently, in the light of above discussion and in the light of the judgment cited by the respondents, I do not find any substance/ cause of action for filing both the election petitions i.e. EP No. 11/14 and EP. 12/14.

27. Interim applications under Order 7 Rule 11 of CPC filed in both the petitions are allowed. Resultantly both the election petitions are hereby dismissed.

**Sd/-**
**C.B.Bajpai**
**Judge**

संचालक, मुद्रण तथा लेखन सामग्री, छत्तीसगढ़ द्वारा शासकीय मुद्रणालय, रायपुर से मुद्रित तथा प्रकाशित - 2017.